

IN THE MATTER OF THE * BEFORE THE
THE APPLICATION OF * COUNTY BOARD OF APPEALS
NEW NORTH POINT COMPANY * OF
FOR A SPECIAL EXCEPTION AND * OF
VARIANCES ON PROPERTY LOCATED * BALTIMORE COUNTY
ON THE SOUTHEAST SIDE ROSEBANK *
AVENUE, 340' NORTHEAST OF C/L *
OF NORTH POINT BOULEVARD * CASE NO. 91-292-XA
(3838 NORTH POINT BOULEVARD)
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT *

OPINION

This case comes before this Board on appeal from an Order of the Deputy Zoning Commissioner denying all the Petitions. The matter before the Board concerns a request for a special exception for an existing Class II trucking facility and variances for paving, fencing and setbacks.

Testifying on behalf of the Petitioner were William Meyers, the property owner; John F. Etzel, his engineer; Nicholas Commodari, a development consultant; and Glen Cook, a traffic engineer. Protestants presented, through People's Counsel, Jackie MacMillan, 7th District planner; Rahee Famili, traffic engineer for Baltimore County; Robert Merrey representing the Department of Environmental Protection & Resource Management (DEPRM); and Guido Guarnaccia, Randy Hill and Roland Miskimon.

The property in question is zoned M.L. with an M.I. district. In 1979, as was required by the new trucking legislation, a site plan was presented and approved at that time. While the use was grandfathered in, the site plan denoted that within 27 months this site would be paved. The site at that time contained 3.4 acres. Protestants aver that since this paving was never completed the

Case No. 91-292-XA New North Point Company 2
nonconforming use of the site has lapsed. The Board is of the opinion that it is not our function to police a facility to see whether or not it has complied with all its requirements. This duty falls to someone else's jurisdiction. As far as this Board is concerned, and as far as we can ascertain from the facts presented at the hearing before this Board, the nonconforming use of 3.4 acres for a trucking facility still exists. However, in 1960 Petitioner purchased 2 acres +/- that contained four individual homes also situated in the M.L.-I.M. zone. The Petition before the Board requests a special exception for the total 5.4 acres, including the four houses. The Board is at a loss to rationalize the justification for the inclusion of these four residential properties into a trucking facility use. There was no testimony received from anyone regarding this aspect of the Petition.

It is the opinion of this Board that to permit the expansion of these four residential dwellings into an existing nonconforming use trucking facility would be detrimental to the health, safety and general welfare of the entire locality involved. Since the Board is therefore going to deny the special exception as requested, the variances requested for the distance between the existing homes are moot, as is the setback of 75 feet in lieu of 300 feet.

The Board will therefore find as a fact from the testimony and evidence submitted and the Memorandums filed that the special exception for a trucking facility containing 5.4 acres must be denied and that a nonconforming use for a trucking facility of 3.4

Case No. 91-292-XA New North Point Company 3
acres shall be granted, and will so order.

ORDER

IT IS THEREFORE this 10th day of August, 1992 by the County Board of Appeals of Baltimore County
ORDERED that the special exception requested for a trucking facility containing 5.4 acres be and the same is DENIED; and it is further

ORDERED that the 3.4 acres of existing nonconforming use be and the same is GRANTED and the surface of crusher run be permitted; and it is further

ORDERED that since the special exception for the 5.4 acre trucking facility has been denied all other requested variances are MOOT.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman
Harry E. Buchheister, Jr.
C. William Clark
Harry E. Buchheister, Jr.

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE COUNTY BOARD
AND VARIANCES : OF APPEALS OF
SE/S Rosebank Ave., 340 NE of : BALTIMORE COUNTY
C/L of North Point Blvd. :
(3838 North Point Blvd.) : Case No.: 91-292-XA
15th Election District :
7th Councilmanic District :
NEW NORTH POINT COMPANY, INC. :
Petitioner :

PETITIONER'S MEMORANDUM

I. STATEMENT OF CASE

The Petitioner in this action is before the Board to request a special exception for an existing Class II trucking facility and variances from Section 410.A.3.B.6 to permit parking, loading, maneuvering, and storage surface areas to be crusher run in lieu of paving; 410A.2 to allow a setback of 75 feet in lieu of 300 feet of a dwelling; Sec. 255.1 (Sec. 238.2) to permit distances between buildings (8105, 8107, 8109 and 8111) Rosebank Avenue, of 21 feet, 46 feet and 36 feet respectively in lieu of the required 60 feet.

This matter was heard before the Board on May 20, 1992 at which time lengthy testimony was given in regard to the Petitioner's requested relief. Appearing and testifying on behalf of the New North Point Company were William Meyers, Vice President of the Petitioner, John Etzel, engineer and registered land surveyor, Nicholas Commodari, a zoning and land development expert, who formerly represented the Zoning Office on Baltimore County's Trucking Facilities Development Officials Committee (herein referred to as the "Trucking Facilities Committee") and Glen Cook, a traffic expert and principal with the Traffic

Group, Inc.

Testifying on behalf of the Protestants in this matter were Jackie MacMillan, Community Planner, Raheem Famady, traffic engineer, Robert Merrey, Baltimore County Department of Environmental Protection and Resource Management as well as Guido Guarnaccia, Roland Miskimon, and Randy Hill.

II. STATEMENT OF LAW

The zoning of Petitioner's property is M.L.-I.M. The Baltimore County Zoning Regulations ("BCZR") permit Class II Trucking Facilities by special exception in the M.L.-I.M. zone. Section 253.2.A.6.

To have a special exception granted, the Petitioner must produce testimony and evidence which shows that the proposed use meets the prescribed standards set forth in Section 502.1 of the BCZR. In order to have a variance granted, the Petitioner must produce testimony and evidences which meets the standards set forth in Section 307 of the BCZR.

The Court of Appeals explained at length the principles applicable to special exception cases in Schultz v. Pritts, 291 Md. 1 (1981). The underlying principal was stated by the Court, as follows: "The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid." Id. at 11. The burden resting on one who applies for permission to establish a special exception use, according to the Court, is to "adduc[e] testimony which will show that his use meets the prescribed standards and requirements [i.e., in

Baltimore County, that the use will not create the harms described by the County Council in Section 502.1 of the BCZR].... If he shows... that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden." Id. In Schultz v. Pritts, the Court cited the earlier case of Turner v. Hammond, 270 Md. 41 (1973), underlining the rule that "if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal." 291 Md. at 11 (emphasis in Turner).

The Court in Schultz v. Pritts went on to proclaim that the standard for denying a requested special exception is whether probative evidence is put forth that shows "that the particular use proposed at the particular location proposed would have any adverse affects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." 291 Md. at 22.

Under Section 307 of the BCZR the Board of Appeals has the authority to grant variances from the requirements of the BCZR.

The Board may grant a variance upon a finding that strict compliance with the BCZR would result in practical difficulty or unreasonable hardship to the Petitioner and his property Anderson v. Board of Appeals, Town of Chesapeake, 22 Md. App. 28.

III. ARGUMENT

The Petitioner has met its burden under Sections 502 and 307 of the BCZR. Accordingly, the Petitioner's requested special exception and variances should be granted.

A) Protestants advocate the position that the 3.4 acres approved for use as a Class II trucking facility pursuant to a 1979 approved site plan no longer stands as a valid nonconforming use because of Section 410A.1.D.3 of the BCZR. Protestants' interpretation of this section is incorrect and is unsupported by any testimony (lay or expert) or any other evidence on the record before the Board.

On the contrary, Nicholas Commodari, formerly of the Trucking Facilities Committee and an expert in the fields of land planning and zoning testified before the Board as to "other" interpretations of Section 410A.1.D.3. Mr. Commodari explained that the implementation of the trucking facilities legislation pursuant to Bill 18 passed in 1976 was a massive undertaking. The sheer magnitude of the Trucking Facilities Committee's job as well as constitutional challenges filed against the implementation of the legislation, as testified to by Mr. Commodari, lead to stays of enforcement of the laws provisions.

Mr. Commodari testified that in his experience Section 410A.1.D.3 of the BCZR was not enforced to close down existing trucking facilities in an M.L.-I.M. zone and nonconforming as is the subject site when a site plan was approved by the Zoning

Commissioner.

The 3.4 acres at issue continues to operate today, as William Meyers, Vice President of New North Point Company testified it has since the 1950's, pursuant to the site plan approved by the Zoning Commissioner in 1979. In fact, nothing in the Zoning Office's comments filed in this case supports the Protestants' application of Section 410A.1.D.3 of the BCZR. The office of zoning has never advocated subsequent to the approval of the 1979 site plan that the 3.4 acres at issue has lost its status as a nonconforming use and there is accordingly no evidence before this Board that would indicate so.

The only evidence of noncompliance with the approved site plan concerns paving. The Petitioner has requested a variance from the paving requirements at this site. The Protestants have not produced any testimony or evidence in support of their position, that the Petitioner's 3.4 acre site at this location has lost its status as a nonconforming use.

As such this Board should and must presume the validity of the subject parcel's nonconforming use status with regard to its decision with respect to this case.

B) The Petitioner has met its burden under Section 502 of the BCZR and the Petitioner's requested special exception should therefore be granted.

William Meyers, Vice President of the New North Point Company testified on behalf of the Petitioner.

Mr. Meyers related to the Board that the Petitioner had owned and operated a tract of 3.4 acres as a trucking facility

- 2-

35

AMN:bis

- 4 -

91 OCT -2 AM 11:13
STATION 11100

Lower:

Cover

91-292-XA

#261

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

91-292-XA

District: 15th
 Posted for: Special Exception to Vardis
 Petitioner: New North Point Co., Inc.
 Location of property: SE/S Rosbank Ave, 340' NE of c/l North Point Blvd
 Location of Signs: Along Rosbank Ave, approx 15' from driveway on property of Baltimore
 Remarks: on property of Baltimore
 Posted by: [Signature]
 Number of Signs: 2

Date of Posting: 4/8/91
 Date of return: 4/5/91

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:
 Case Number: 91-292-XA
 15th Election District - 7th Councilmanic
 Petitioner(s): New North Point Co., Inc.
 HEARING: THURSDAY, MARCH 28, 1991
 AT 2:30 P.M.
 Special Exception for a trucking facility, Class II.
 Variance to allow parking, loading, maneuvering and storage area to be crushed run in lieu of paving to allow a setback of 75 feet in lieu of 300 feet of a dwelling; and to permit distances between buildings (8105, 07, 09 and 11) and 21 feet, 46 feet and 36 feet respectively in lieu of the required 60 feet.
 J. Robert Haines
 Zoning Commissioner of Baltimore County

The Times
Middle River, Md., May 1 1991
 This is to Certify, That the annexed
Volume
80# 0110392
 was inserted in The Times, a newspaper printed and published in Baltimore County, once in each of One successive weeks before the 1st day of May, 1991.
[Signature] Publisher.
 \$21.00

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

Date

7/92/91

APPROVAL FEES

QTY	PRICE
1	\$175.00
1	\$125.00
1	\$25.00
TOTAL	\$325.00

LAST NAME OF OWNER: NEW NORTH PT CO
 Please Make Checks Payable To: Baltimore County
 044040123MICHRC
 88 0012499M07-02-91

Cashier Validation

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

Date

4/25/91

PUBLIC HEARING FEES

QTY	PRICE
1	\$113.21
TOTAL	\$113.21

LAST NAME OF OWNER: NEW NORTH PT CO
 Please Make Checks Payable To: Baltimore County
 044040123MICHRC
 88 0012499M04-23-91

Cashier Validation

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

91-292-XA

District: 15th
 Posted for: Special
 Petitioner: New North Point Co., Inc.
 Location of property: SE/S Rosbank Ave, 340' NE of c/l North Point Blvd
 Location of Signs: Along Rosbank Ave, approx 20' from driveway on property of Baltimore
 Remarks: on property of Baltimore
 Posted by: [Signature]
 Number of Signs: 1

Date of Posting: 7/1/91
 Date of return: 7/1/91

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:
 Case Number: 91-292-XA
 15th Election District - 7th Councilmanic
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 J. Robert Haines
 Zoning Commissioner of Baltimore County

CERTIFICATE OF PUBLICATION
TOWSON, MD., 3-5, 1991
 THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 2-25, 1991.
THE JEFFERSONIAN.
S. Zeke Olin
 Publisher
 \$42.21

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

Date

7/92/91

APPROVAL FEES

QTY	PRICE
1	\$175.00
1	\$125.00
1	\$25.00
TOTAL	\$325.00

LAST NAME OF OWNER: NEW NORTH PT CO
 Please Make Checks Payable To: Baltimore County
 044040123MICHRC
 88 0012499M07-02-91

Cashier Validation

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

887-3353

111 West Chesapeake Avenue
Towson, MD 21204

DATE: 3-12-91

New North Point Company, Inc.
3838 North Point Boulevard
Baltimore, Maryland 21222

RE:
 Case Number: 91-292-XA
 SE/S Rosbank Avenue, 340' NE of c/l North Point Boulevard
 15th Election District - 7th Councilmanic
 Petitioner(s): New North Point Co., Inc.
 HEARING: THURSDAY, APRIL 23, 1991 at 2:00 p.m.

Dear Petitioner(s):

Please be advised that \$ 113.21 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE OWNER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND
cc: S. Eric DiMenna, Esq.

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

887-3353

111 West Chesapeake Avenue
Towson, MD 21204

DATE:

New North Point Company, Inc.
3838 North Point Boulevard
Baltimore, Maryland 21222

RE:
 Case Number: 91-292-XA
 SE/S Rosbank Avenue, 340' NE of c/l North Point Boulevard
 15th Election District - 7th Councilmanic
 Petitioner(s): New North Point Co., Inc.
 HEARING: THURSDAY, MARCH 28, 1991 at 2:30 p.m.

Dear Petitioner(s):

Please be advised that \$ _____ is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE OWNER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND
cc: S. Eric DiMenna, Esq.

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

887-3353

111 West Chesapeake Avenue
Towson, MD 21204

February 7, 1991

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Case Number: 91-292-XA
 SE/S Rosbank Avenue, 340' NE of c/l North Point Boulevard
 15th Election District - 7th Councilmanic
 Petitioner(s): New North Point Co., Inc.
 HEARING: THURSDAY, MARCH 28, 1991 at 2:30 p.m.

Special Exception for a trucking facility, Class II.
 Variance to allow parking, loading, maneuvering and storage area to be crushed run in lieu of paving; to allow a setback of 75 feet in lieu of 300 feet of a dwelling; and to permit distances between buildings (8105, 07, 09 and 11) of 21 feet, 46 feet and 36 feet respectively in lieu of the required 60 feet.

J. Robert Haines

J. ROBERT HAINES
Zoning Commissioner of Baltimore County
cc: New North Point Company, Inc.
 S. Eric DiMenna, Esq.

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

887-3353

111 West Chesapeake Avenue
Towson, MD 21204

March 1, 1991

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Case Number: 91-292-XA
 SE/S Rosbank Avenue, 340' NE of c/l North Point Boulevard
 15th Election District - 7th Councilmanic
 Petitioner(s): New North Point Co., Inc.
 HEARING: THURSDAY, APRIL 23, 1991 at 2:00 p.m.

Special Exception for a trucking facility, Class II.
 Variance to allow parking, loading, maneuvering and storage area to be crushed run in lieu of paving; to allow a setback of 75 feet in lieu of 300 feet of a dwelling; and to permit distances between buildings (8105, 07, 09 and 11) of 21 feet, 46 feet and 36 feet respectively in lieu of the required 60 feet.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County
cc: New North Point Company, Inc.
 S. Eric DiMenna, Esq.

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning
111 West Chesapeake Avenue
Towson, MD 21204
887-3353
April 19, 1991

S. Eric DiNenna, Esquire
409 Washington Avenue, Suite 600
Towson, MD 21222

RE: Item No. 261, Case No. 91-292-XA
Petitioner: New North Point Company
Petition for Special Exception and
Zoning Variance

Dear Mr. DiNenna:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE MINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: C.A. Meyers
New North Point Company, Inc.
3838 North Point Blvd
Baltimore, MD 21222

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning
111 West Chesapeake Avenue
Towson, MD 21204
887-3353

Your petition has been received and accepted for filing this
21th day of December, 1991.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

James E. Dyer
Chairman
Zoning Plans Advisory Committee

Petitioner: New North Point Company, et al
Petitioner's Attorney: S. Eric DiNenna

Baltimore County Government
Department of Public Works
Bureau of Traffic Engineering
401 Bosley Avenue, Suite 405
Towson, MD 21204
887-3554
Fax 887-5781

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 261
Property Owner:
Location:

Z.A.C. January 16, 1991
New North Point Company, Inc.
Southeast side Rosebank Avenue, 340'
northeast of North Point Blvd.

Existing Zoning:
Proposed Zoning:

M.L.-I.M.
Special Exception for a trucking
facility, Class II. Variance to allow
parking, loading, maneuvering and
storage area to be crush run in lieu of
paving; to allow a setback of 75' in
lieu of 300' of a dwelling; and to
permit distance between buildings
(8105, 07, 09 & 11) of 21', 46', and 36'
respectively in lieu of the required 60'.
5.4 acres
15th Election District
7th Councilmanic District

Area:
District:

Dear Mr. Haines:

This office has reviewed the site plan and has the following comments:

- 1) Rosebank Avenue is very narrow and problems can be expected with its use by large trucks.
- 2) Access to the site should meet County standards and should be shown on the plan.

Very truly yours,

Michael S. Planigan
Michael S. Planigan
Traffic Engineer Associate II

received
3/1/91

MSF/lvd

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: February 7, 1991

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: New North Point Company, Inc., Item No. 261

The petitioner requests a Special Exception and a Variance for a trucking facility - Class II.

In reference to the applicant's request, staff offers the following comments:

Site Description

The site is partially paved (in poor condition) and is improved with an office/truck terminal and four (4) brick houses on individual lots. The property is bounded on the south by a mobile home park; a single-family dwelling and woods, which apparently contain wetlands, to the west; and an exit ramp for the Patapsco Freeway to the north and east.

The proposed use is of concern to staff for the following reasons:

1. The plan does not propose adequate screening of the mobile home park.
2. This office questions the need for four (4) caretaker homes. If the required buffers were applied to these homes, the unusable land would be substantially reduced.
3. Fugitive dust is a major nuisance in many residential communities located near commercial and industrial uses. This dust results when crusher run or gravel is provided in lieu of a durable, dustless surface.

received
2/8/91

New North Point Company, Inc., Item No. 261
Page 2
February 7, 1991

4. Community planner, Jackie MacMillan, has received numerous complaints from residents in the vicinity of the New North Point Company regarding dust and noise created by other trucking companies that lack a suitable parking surface.
5. The applicant's connection to a protracted zoning history of violations is of particular concern to this office. Property located on the northeast corner of Cove Road and North Point Boulevard has been cited as a dump. This property, owned by the petitioner, has an interesting zoning history that dates back approximately 28 years.

Master Plan

The Baltimore Master Plan acknowledges that the Patapsco Neck area of Baltimore County has a long history of conflicts among its residential, commercial, and industrial properties. The plan outlines a "creative option" for relocating uses such as the applicant's to industrially zoned surplus land at Sparrows Point.

The plan recognizes that serious attention [is worthwhile] for improving its [North Point Boulevard], both for the sake of the nearby residential areas it serves and because much of the boulevard is visible from the Beltway and can function as part of the northern approach to the county's ambitious industrial redevelopment project at Sparrows Point.

The applicant's site is located in a Community Conservation Area as indicated on p. 39 of the Master Plan. The plan outlines the following action intended for Community Conservation Areas.

- "The county will consider the use of Community Conservation Area designations to facilitate stringent review of development proposals and direct attention to specific community needs. Proposals encouraging extra traffic harmful to the neighborhood should be avoided."

Recommendation

Based upon the information provided, the analysis conducted, and concern of the residents, staff recommends that the petitioner's request be denied.

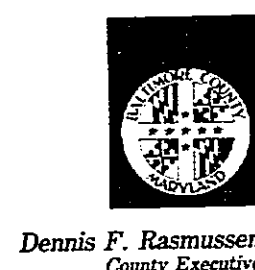
If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm
ITEM261/2A1

received
2/8/91

Baltimore County
Fire Department
700 East Joppa Road, Suite 901
Towson, Maryland 21204-5500
(801) 887-4500
Paul H. Reincke
Chief

January 4, 1990



J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: NEW NORTH POINT COMPANY, INC.

Location: SE/S ROSEBANK AVENUE

Item No.: 261 Zoning Agenda: JANUARY 16, 1991

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Ch. Kelly* 1-8-90 Noted and Approved
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/REK

received
1/8/90

BALTIMORE COUNTY, MARYLAND
Inter-office Correspondence

TO: J. Robert Haines

FROM: Robert C. Merrey, Jr. *RCM*

DATE: January 18, 1991

SUBJECT: Zoning Advisory Committee Meeting Item #261

Comments on Zoning Advisory Committee Item #261 are as follows:

Property Owner: New North Point Company, Inc.

Location: SE/S Rosebank Avenue, 340' NE of Centerline North Point Boulevard

Existing Zoning: M.L. - I.M.

Area: 5.4 acres

District: 15th Election District
7th Councilmanic District

This Office recommends that the use of crusher run not be approved in lieu of paving. This type of surface, when subjected to truck traffic causes dust problems when not conscientiously and consistently maintained. Historically, the level of maintenance required to keep a crusher run surface dustless under this usage is not provided, and for this reason, we are recommending that paving be required.

tk

cc: Eastern Regional

RECEIVED
JAN 23 1991
ZONING OFFICE

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee
DATE: January 14, 1991

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for January 16, 1991

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 205 revised, 261, and 263

For 81-94 SPH (Rock Church), the previous County Review Group comments are applicable.

For Item 264, a County Review Group Meeting is required.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

February 19, 1991

S. Eric DiNenna, Esq.
409 Washington Avenue, Suite 600
Towson, Maryland 21204

Re: Case Number(s): 91-292-XA
SE/S Rosebank Avenue, 340' NE of c/l North Point Boulevard
15th Election District - 7th Councilmanic
Petitioner(s): New North Point Company, Inc.
POSTPONEMENT OF MARCH 28, 1991 HEARING DATE

Dear Mr. DiNenna:

This to acknowledge receipt of your correspondence dated February 8, 1991, wherein you requested postponement of the scheduled March 28, 1991 hearing of the above captioned matter.

Accordingly, the case has been pulled from that day's docket. You will be notified when same is reset.

If you have any questions, please feel free to contact me.

Very truly yours,

/s/
G. G. Stephens
(301) 887-3391

cc: New North Point Company, Inc.

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

May 22, 1991

887-3353

S. Eric DiNenna, Esquire
409 Washington Avenue, Suite 600
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
SE/S Rosebank Avenue, 340' NE of the c/l of North Point Boulevard
(8125 Rosebank Avenue)
15th Election District - 7th Councilmanic District
New North Point Company, Inc. - Petitioners
Case No. 91-292-XA

Dear Mr. DiNenna:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Exception and Zoning Variance have been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

Ann M. Nastarowicz
ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

cc: Mr. Guido Guarnaccia
3912 Glenhurst Road, Baltimore, Md. 21222

Mr. Roland Miskimon
3921 North Point Road, Baltimore, Md. 21222

Mr. Randy Hill
8110 Raymond Avenue, Baltimore, Md. 21222

Ms. Jackie MacMillan, Community Planner, Office of Planning

Mr. Robert Merrey, DEPREM

People's Counsel, File

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

July 11, 1991

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Special Exception and Zoning Variance
SE/S Rosebank Avenue, 340' NE of the c/l of North Point Boulevard
(3838 North Point Boulevard)
15th Election District, 7th Councilmanic District
NEW NORTH POINT COMPANY, INC. - Petitioner
Case No. 91-292-XA

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on June 21, 1991 by S. Eric DiNenna, Attorney on behalf of the Petitioner. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner

JRH:cer

Enclosures

cc: C.A. Meyers - New North Point Company, Inc.
3838 North Point Boulevard, Baltimore, MD 21222

Oscar A. Meyers, III, 8220 Abell Avenue, Baltimore, MD 21218

John F. Etzel, 412 Delaware Avenue, Baltimore, MD 21204

Guido Guarnaccia, 3912 Glenhurst Road, Balto., MD 21222

Appeal Cover Letter - Case No. 91-292-XA
THE NEW NORTH POINT COMPANY, INC.
Page 2

Roland Miskimon, 3921 North Point Boulevard, MD 21222

Randy Hill, 8100 Raymond Avenue, Balto., MD 21222

Jackie MacMillan, Office of Planning, M.S. #3402

Robert Merrey, Environmental Protection, M.S. #3404

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

File

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Councilman Donald C. Mason March 3, 1993

FROM: Arnold Jablon

RE: New North Point Company
Case No. 91-292-XA

I have reviewed your memo to me, dated February 19, 1992, very carefully and considered the concerns raised by Mr. Guarnaccia.

It should be first noted that the petitioner sought a special exception for class II trucking facility and variances to paving, fencing and setback requirements. A very important point considered by the board was whether a part of the property, 3.4 acres, still enjoyed the existence of a nonconforming trucking facility. The board found that it still existed.

The second issue was whether 2 adjoining acres, purchased by the petitioner in 1960, that contained 4 residential buildings, also now zoned MU-1M, should be added to the original 3.4 and a trucking facility permitted on all 5.4 acres by special exception. The board denied the special exception requested for the entire property, leaving in place the nonconforming use. It also denied all variances except to permit a crusher run surface instead of an impermeable surface on the 3.4 acre nonconforming use.

The board did not grant a special exception for a class II trucking facility. It did find that the trucking facility on the 3.4 acres existed prior to Bill No. 18-76, the trucking facility legislation. The evidence before the board proved to the satisfaction of same that the petitioner had complied with the requirements contained in Bill No. 18-76, and, therefore, was nonconforming.

The petitioner, however, never fulfilled his obligation, under the site plan submitted at that time, to pave the site. The board did permit the property owner to forego the paving and substitute in lieu thereof a crusher run surface.

Councilman Donald C. Mason
Page Two
March 3, 1992

Therefore, in answer to the direct issues relating to this property in 91-292-XA, a special exception was denied, attendant variances were denied except to permit a change in surface. A nonconforming use was found to exist on the 3.4 acres.

The broader questions raised are to the zoning commissioner's and the board's authority to grant variances for a trucking facility on less than 5 acres, to fencing and to type of surface required.

Section 307 of the Baltimore County Zoning Regulations (BCZR) permits the granting of variances from height and area regulations and from off-street parking regulations. Section 410.3B.7 and Section 410A.3B.6 (BCZR) set forth the requirement that parking areas for trucking facilities must be paved in accord with Section 409.8A.2 (BCZR), which requires a durable and dustless surface. The zoning commissioner and board have previously determined that the area of the lot size and the paving requirement fall within their authority to grant variances from height and area regulations and to off-street parking regulations. This interpretation has been of long-standing duration and has not been reversed by any court, as yet. The same reasoning applies to fences, whether at a trucking facility or at a private residence. The height, or lack of a fence altogether, falls within the general category of "height and area" as found in Section 307 (BCZR). Various decisions of the board involving these issues have been appealed, and the courts have revised or upheld these decisions. All of the reviews have interpreted whether the strictures of Section 307 (BCZR) have been satisfied. None have reversed the board on the fundamental question whether the requested variances are use variances (which are not permitted) or variances to height, area and off-street parking regulations (which are permitted). By inference, therefore, the courts have upheld the board's authority to grant such variances.

AJ:esh



Baltimore County, Maryland

PEOPLES COUNSEL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
887/4862188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

October 2, 1991

Mr. Guido Guarnaccia, Chairman
Environmental Committee
Wells-McComas Citizens Improvement Assn.
3912 Glenhurst Road
Baltimore, Maryland 21222

RE: NEW NORTH POINT COMPANY, INC.,
Petitioner - Case No. 91-292-XA

Dear Mr. Guarnaccia:

Enclosed herewith please find our Entry of Appearance in the above-referenced case, as well as Rule 8 materials that you will need in order to represent your community association. I have put your name in our file to be copied on correspondence concerning this matter and I am requesting the Board to do so as well.

I will be talking to you about this case when we get closer to the time for hearing.

Sincerely yours,

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: County Board of Appeals

PCF:sh



Baltimore County, Maryland

PEOPLES COUNSEL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
887/4862188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

August 27, 1991

William T. Hackett, Chairman
County Board of Appeals
Room 315, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: NEW NORTH POINT COMPANY, INC., Petitioner
Zoning Case No. 91-292-XA

Dear Chairman Hackett:

Please be advised that this office has not yet determined whether it is appropriate to enter its appearance in this case. However, in the interim, we would appreciate it if copies of all materials and notices relative to the case are sent to us.

Thank you for your cooperation.

Sincerely yours,

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

PCF:sh

cc: S. Eric DiNenna, Esquire
Oscar A. Meyers, III
John F. Etzel
Guido Guarnaccia
Roland Miskimon
Randy Hill
Jackie MacMillan, OPZ
Robert Merrey, DEPREM

91 OCT -2 AM 11:18
COUNTY BOARD OF APPEALS
RECEIVED

91 AUG 27 PM 12:20
COUNTY BOARD OF APPEALS
RECEIVED

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180
Hearing Room -
Room 301, County Office Bldg.
September 5, 1991
BUREAU OF PUBLIC SERVICES

NOTICE OF ASSIGNMENT
NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 91-292-XA
NEW NORTH POINT COMPANY, INC.
SE/s Rosebank Ave., 340' NE of c/l of North Point Blvd. (3838 North Point Blvd.)
15th Election District
7th Councilmanic District
SE-Existing Class II Truck Facility;
VAR-Parking, surfaces, etc.; setbacks
5/22/91 - D.Z.C.'s Order DENYING Petitions.

ASSIGNED FOR: WEDNESDAY, JANUARY 15, 1992 at 10:00 a.m.

cc: S. Eric DiNenna, Esquire - Counsel for Petitioner/Appellant
C.A. Meyers - New North Point Co., Inc. - " "

Mr. Oscar A. Meyers
Mr. John F. Etzel
Mr. Guido Guarnaccia
Mr. Roland Miskimon
Mr. Randy Hill
Jackie MacMillan
Robert Merrey
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon-Director of Zoning Administration
LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180
Hearing Room -
Room 48, Old Courthouse
February 13, 1992

2nd NOTICE OF POSTPONEMENT & REASSIGNMENT
NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 91-292-XA
NEW NORTH POINT COMPANY, INC.
SE/s Rosebank Ave., 340' NE of c/l of North Point Blvd. (3838 North Point Blvd.)
15th Election District
7th Councilmanic District
SE-Existing Class II Truck Facility;
VAR-Parking, surfaces, etc.; setbacks
5/22/91 - D.Z.C.'s Order DENYING Petitions.

which was rescheduled for hearing on March 5, 1992 has been POSTPONED at the request of Counsel for Petitioner; and has been

REASSIGNED FOR: WEDNESDAY, MAY 20, 1992 at 10:00 a.m.

cc: George A. Breschi, Esquire - Counsel for Petitioner/Appellant
Francis X. Borgerding, Jr. - " "
C.A. Meyers - New North Point Co., Inc. - " "
Mr. Oscar A. Meyers
Mr. John F. Etzel
Mr. Guido Guarnaccia
Mr. Roland Miskimon
Jackie MacMillan
Robert Merrey
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
Zoning Supervisor
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon-Director of Zoning Administration
Kathleen C. Weidenhammer
Administrative Assistant

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180
Hearing Room -
Room 48, Old Courthouse
January 7, 1992

NOTICE OF POSTPONEMENT & REASSIGNMENT
NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 91-292-XA
NEW NORTH POINT COMPANY, INC.
SE/s Rosebank Ave., 340' NE of c/l of North Point Blvd. (3838 North Point Blvd.)
15th Election District
7th Councilmanic District
SE-Existing Class II Truck Facility;
VAR-Parking, surfaces, etc.; setbacks
5/22/91 - D.Z.C.'s Order DENYING Petitions.

which was scheduled for hearing on January 15, 1992 has been POSTPONED at the request of Counsel for Petitioner due to the untimely death of S. Eric DiNenna; and has been

REASSIGNED FOR: THURSDAY, MARCH 5, 1992 at 10:00 a.m.

cc: George A. Breschi, Esquire - Counsel for Petitioner/Appellant
Francis X. Borgerding, Jr. - " "
C.A. Meyers - New North Point Co., Inc. - " "
Mr. Oscar A. Meyers
Mr. John F. Etzel
Mr. Guido Guarnaccia
Mr. Roland Miskimon
Jackie MacMillan
Robert Merrey
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon-Director of Zoning Administration
Kathleen C. Weidenhammer
Administrative Assistant

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180
August 10, 1992

Francis X. Borgerding, Jr., Esquire
DINENNA AND BRESCHI
Suite 600
Mercantile-Towson Building
409 Washington Avenue
Towson, MD 21204

RE: Case No. 91-292-XA
New North Point Company

Dear Mr. Borgerding:
Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Sincerely,
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: C. A. Meyers /New North Point Company
Oscar A. Meyers, III
John F. Etzel
Guido Guarnaccia
Roland Miskimon
Jackie MacMillan
Robert Merrey
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning Admin.

9/5/91 - Following parties notified of hearing set for January 15, 1992 at 10:00 a.m.:

S. Eric DiNenna, Esquire
C.A. Meyers - New North Point Co., Inc.
Mr. Oscar A. Meyers
Mr. John F. Etzel
Mr. Guido Guarnaccia
Mr. Roland Miskimon
Mr. Randy Hill
Jackie MacMillan
Robert Merrey

People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon-Director of Zoning Administration

1/7/92 - Above parties (Breschi for DiNenna) notified of POSTPONEMENT and REASSIGNMENT to March 5, 1992 at 10:00 a.m. at request of Counsel for Petitioner.

2/13/92 Request for Postponement by Counsel for Petitioner GRANTED; postponed and reassigned to Wednesday, May 20, 1992.

5/20/92 -Matter heard before Board; memos due 6/19/92.

6/10/92 -Memo filed by People's Counsel.

6/19/92 -Memo filed by Francis X. Borgerding, Jr., Counsel for Petitioner. Bd = HCB

County Council of Baltimore County
COUNTY COURT HOUSE, TOWSON, MARYLAND 21204
DONALD C. MASON
COUNCILMAN, SEVENTH DISTRICT
COUNCIL OFFICE: 887-3186
DUNDALK DISTRICT OFFICE: 887-1174
NORTH POINT GOVERNMENT CENTER
7701 WISE AVENUE
DUNDALK, MD 21222

MEMORANDUM

DATE: FEBRUARY 19, 1992
TO: ARNOLD JABLON, DIRECTOR ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT
FROM: DON MASON, COUNCILMAN, 7TH DISTRICT DCM
SUBJECT: NEW NORTH POINT COMPANY, CASE NO. 91-292-XA, AUG. 10, 92

Mr. Guido Guarnaccia contacted my office with a number of questions about the above case. He has questioned the Board of Appeals ruling of this issue. His concerns essentially can be found in the August 17th letter from People's Counsel (See attached) to Bill Hackett, Chairman of the Board of Appeals.

People's Counsel Office told us today, that they had not received a response from the Board of Appeals to their letter of August 17th. Pete Zimmerman had a conversation with Bill Hackett the day before the final date for filing an appeal on this decision. Pete asked for reconsideration or clarification of this case. Bill Hackett's response was that his decision still stands.

Arnold, I guess what I am asking is, by what authority can the Board of Appeals over-rule the requirement for a trucking facility of less than 5 acres to have security fencing and black top surfacing versus no security fencing and crusher run?

I would appreciate any reference of codes, charter, or a precedent that supports or rejects the finding of the Board of Appeals in this case.

Enclosure:
People's Counsel's Letter
Board of Appeals Opinion

RECEIVED
FEB 24 1993

ZONING OFFICE

Baltimore County, Maryland
PEOPLE'S COUNSEL
ROOM 47, Courthouse
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
887-3186

PHYLIS COLE FRIEDMAN
People's Counsel
August 17, 1992
PETER MAX ZIMMERMAN
Deputy People's Counsel

The Honorable
William T. Hackett, Chairman
County Board of Appeals
Room 49, Courthouse
400 Washington Avenue
Towson, MD 21204

RE: New North Point Company, Petitioner
Case No. 91-292-XA

Dear Chairman Hackett:

This is to request reconsideration or clarification of the portion of the Board's decision dated August 10, 1992 granting the nonconforming use for the existing 3.4 acres, as well as the variance for a crusher run surface.

The Board has failed to articulate the factual and legal basis for a determination that the existing facility satisfied the site plan requirements for nonconforming status under Section 410A of the regulations. The 1977 site plan lacked provision for access to a public industrial service road or drainage. Moreover, there was never compliance with the stated schedule for paving. Under these circumstances, there is no legally sufficient evidence to support the Board's finding of a valid nonconforming use. Even if it were permissible to overlook these deficiencies, there is further lacking any basis to vary the paving standards and allow crusher run. The testimony of Robert Merrey and neighboring Protestants negated any justification for a variance.

The presence of a trucking facility use on the site for many years is not sufficient, by itself, to justify a declaration that it is legal. The circumstance of this case demanded that the Board address the existence of a nonconforming use, but the Board should reconsider its conclusion in light of the facts and applicable law.

Very truly yours,
Peter Max Zimmerman
Deputy People's Counsel

cc: Guido Guarnaccia
Francis X. Borgerding, Jr., Esquire

PMZ:sh

PLEASE PRINT CLEARLY
PETITIONER(S) SIGN-IN SHEET
NAME ADDRESS
Oscar A. Meyers, III 8220 Alameda 21218
Cesar A. Dyer 2185 P. Dunstons Rd 21212
John F. Etzel 412 P. Dunstons Rd 21212

PLEASE PRINT CLEARLY
PROTESTANT(S) SIGN-IN SHEET
NAME ADDRESS
Guido Guarnaccia 3912 S. Dunstons Rd. Baltimore 21222
Roland Miskimon 5912 P. Dunstons Rd 21222
Jackie MacMillan 412 P. Dunstons Rd 21212
Robert Merrey 412 P. Dunstons Rd 21212
Baltimore Dept. Env. Prot. & Res. Mgmt.

321-3461

Final Report of the
Baltimore County Planning Board
Adopted February 19, 1976

EXHIBIT A

APR 111

10/11/76 #8

PROPOSED ZONING AMENDMENTS:
TRUCKING FACILITIES

Baltimore County Office of Planning and Zoning
Towson, Maryland 21204

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 1979

No. 18

NO. 75-266-X

JOHN J. LASKEY, et al.,

v.

BETHLEHEM STEEL
CORPORATION, et al.

Gilbert, C.J.
Wilner
Couch,
JJ.

PER CURIAM

Filed: September 26, 1979

RECEIVED
BALTIMORE COUNTY
SEP 27 3 20 PM '79
COUNTY BOARD
OF APPEALS

BY: *from People's Counsel*

RE: PETITION FOR SPECIAL HEARING
under Section 500.7 of the Baltimore
County Zoning Regulations to
determine the designation of Morse
Lane, between Wise Ave. East and
North Point Blvd. as a "public
industrial service road" - 15th Dist.
William Amiger and
Daily Express, Inc., Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 80-160-SH

Case # 2
SH-10

OPINION

This case comes before this Board on appeal from a decision of the
Zoning Commissioner, dated May 12, 1980, designating Morse Lane, between Wise Avenue
Extended and North Point Boulevard, as a "public industrial service road". A special
hearing on this issue only was held and completed on January 27, 1981.

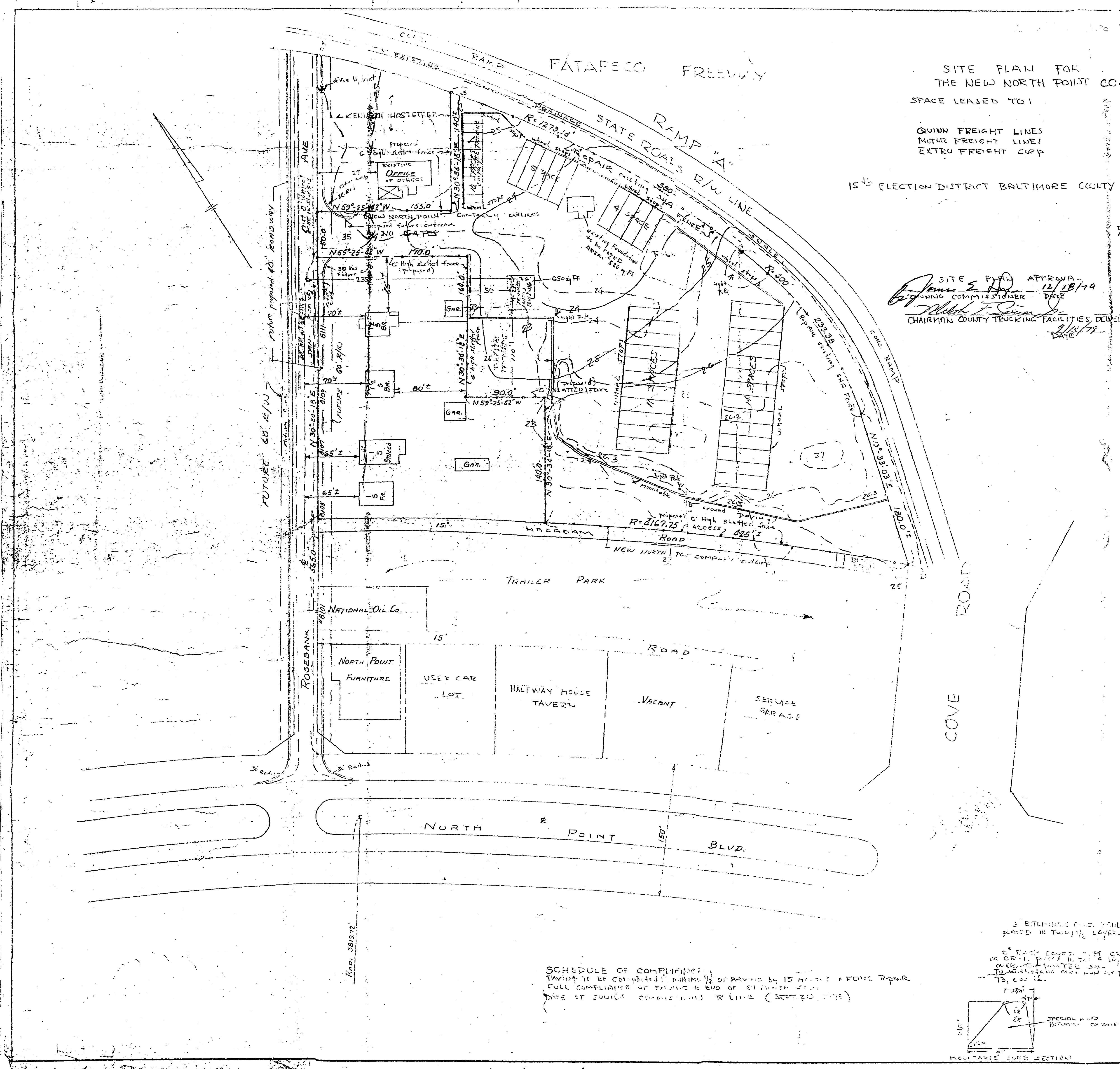
William Amiger, Petitioner, testified as to the need for this access road
designation. He stated that he is the contract purchaser for 150+ acres of this MH-IM
zoned land. In addition to other commercial uses, he intends to develop a Class II
truck terminal on this property and in order to do so, the access road, in this instance,
must be designated as a "public industrial service road". He noted that compliance
with all the requirements of Bill 18-76 would reduce to 50 acres, centrally located on the
property, the amount of area available to be used as a truck terminal. He testified
as to the need in this area for a truck terminal located within twenty minutes driving time
to the Bethlehem Steel Sparrows Point facility and the need for a legal storage area for
tractor-trailers rather than a hazardous parking of them elsewhere. He also noted that
any other commercial or manufacturing facility could be built on this site without the
requested road designation, and that any such industry would automatically generate truck
traffic. He also admitted to serious deficiencies at the intersection of Morse Lane and
North Point Boulevard as it now exists, and agreed to participate in any improvements
needed here to bring this intersection into compliance with various State and County
agency requirements.

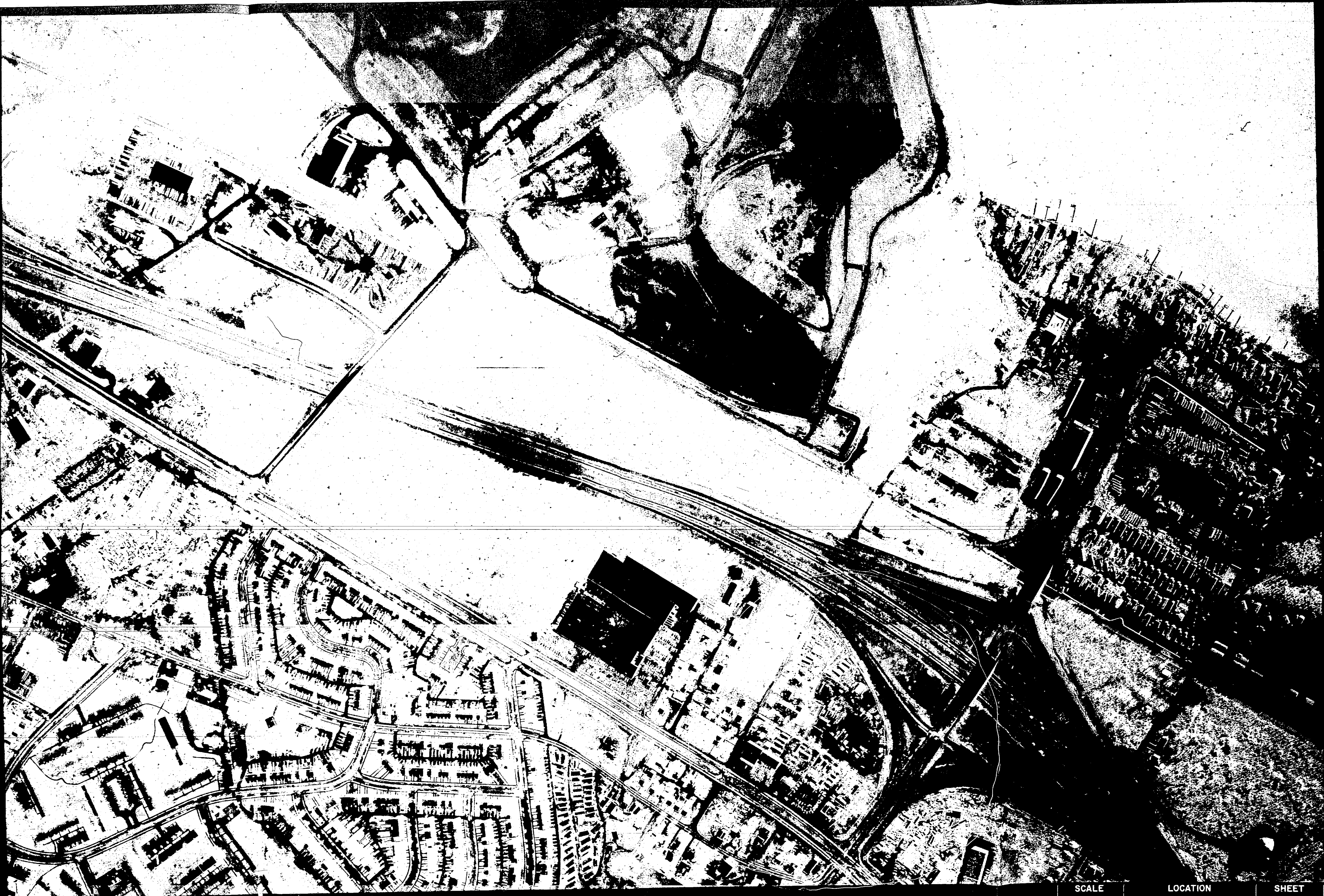
Richard C. Moore, Assistant Traffic Engineer for Baltimore County, testi-
fied that this road should be designated as requested. He testified that road designa-
tions generally depend on the functional use of such a road to the use of the area it serves.
He also testified that this road meets all the requirements for such designation defined in



MR. ZIMERMANN ESA
PEOPLE'S COUNSEL FOR BALTO. CO.
ROOM. 47, COURT HOUSE
400 WASHINGTON AVE. TOWSON,
MARYLAND 21204







BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

SCALE
1" = 200' ±

DATE
OF
PHOTOGRAPHY
JANUARY
1986

LOCATION

NORTH POINT *Ed*
Prok #3

SHEET

S. E.
2-G

since the 1950's. Mr. Meyers further testified that the Petitioner acquired an additional adjacent parcel of land in the mid 1980's which the company is now seeking to incorporate into its operation at the location. Pursuant to the site plan submitted Petitioner's Exhibit #2 the total acreage with the addition is 5.4 acres.

Mr. Meyers testified that he was unaware of any complaints relating to the operation of the property from any nearby residents or members of the community since the Petitioner began using the property as a trucking facility in the 1950's.

Mr. Meyers testified that the additional property sought to be included by Petitioner pursuant to the requested special exception would be used for offices for the facility as well as four caretakers dwellings to provide screening and security for the property.

Mr. Meyers related that in the past the property has received low to moderate use as a trucking facility. Mr. Meyers further testified that he anticipated the use to stay within that range if the Petitioner's relief is granted.

John Etzel testified on behalf of the Petitioner as an engineer and professional land surveyor and engineer. Mr. Etzel related that his office had prepared and filed the site plan approved by the Zoning Commissioner in 1979 for use of 3.4 acres at the location as a Class II trucking facility.

Mr. Etzel also testified to preparing the site plan entered as Petitioner's Exhibit #2 relating to the relief requested by Petitioner. Mr. Etzel's testimony included a description of the

site, as well as a description of the area surrounding the property including the Patapasco Freeway, Cove Road, a trailer park with adjacent commercial and industrial uses to the southwest, and Rosebank Avenue. Mr. Etzel pointed out the screening between the property and the trailer park from fencing as well as natural vegetation.

Nicholas Commodari testified on behalf of the Petitioner as an expert in Land Planning and Development. Mr. Commodari testified that while employed by the Office of Planning and Zoning he served on the Trucking Facilities Committee which was responsible for implementing the trucking facilities legislation passed in 1976.

Mr. Commodari noted the properties location within an area of primarily industrial and commercial uses with some residential uses also included. Mr. Commodari noted the properties close proximity to major roadways such as Northpoint Boulevard and the adjoining Patapasco Freeway.

Mr. Commodari's testimony included detailed discussion as to why in his opinion the Petitioner's proposed use would not conflict with any of the provisions of Section 502.1 of the BCZR.

Mr. Commodari's testimony covered all elements of Subsections a) through h) of Section 502.1 of the BCZR. The sum and substance of Mr. Commodari's testimony concerning the elements of Section 502.1 of the BCZR was that the Petitioner's proposed use would not conflict with any of the required elements of the Section.

The Petitioner also called as a witness, Glen Cook, a traffic expert and principal of the Traffic Group. Mr. Cook revealed that based upon his investigation of the subject location as well as traffic counts taken on Rosebank Avenue, the road system in the area including Rosebank Avenue was perfectly capable of handling the Petitioner's proposed use of the subject property.

Mr. Cook noted that vehicles from the Petitioner's property only had to travel several hundred feet to reach North Point Boulevard.

Mr. Cook further testified that from a traffic standpoint that if the Petitioner's special exception was granted, the proposed use would not be detrimental to the health, safety, or general welfare of the locality. He further testified that if the Petitioner's requested special exception was granted, the proposed use would not tend to create congestion in area roads, streets or alleys and would not interfere with adequate transportation in the area.

In further testimony, Mr. Cook testified that he disagreed with the comment filed by Michael S. Flanigan dated January 16, 1991 from the Bureau of Traffic Engineering wherein Mr. Flanigan stated that Rosebank Avenue is "very narrow and problems can be expected with its use by large trucks". In Mr. Cook's opinion, Rosebank Avenue having a width of 20 feet from a traffic perspective is not a narrow roadway. In addition, he disputed Mr. Flanigan's claim that "problems can be expected with its use by large trucks." Mr. Cook noted that Rosebank Avenue dead ends

at the Petitioner's property making it very difficult for a truck to build speed while traversing the short distance between the property and North Point Boulevard. Mr. Cook also indicated he disagreed with the comment in light of the projected traffic volume from the Petitioner's proposed use.

When the expert and lay testimony produced by the Petitioner is viewed as a whole, it is clear that the Petitioners have met their burden of producing testimony and evidence that their proposed use meets the requirements of Section 502 of the BCZR.

Applying the standard set forth in Schultz v. Pritts it is also clear that the Protestants have not put forth probative evidence that shows that the Petitioner's proposed use would have any adverse affects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

When applying this standard, this Board should remain cognizant of the fact that as Petitioner's proposed use is allowed by special exception in an M.L.-I.M. zone, the use enjoys a presumption that, as such, it is in the interest of the general welfare, and therefore, valid.

Guido Guarnaccia, Roland Miskimon and Randy Hill testified on behalf of the Protestants as "Area" residents, however, it is clear that none of these individuals live in close proximity to the Petitioner's property. Although these individuals asserted that they represented the community none of them had any written

documentation so authorizing them.

Randy Hill in fact indicated to the Board that he is in the process of moving away from his present address.

The major thrust of these individuals' testimony was that the Petitioner's proposed use would have an adverse impact on the residents of the nearby trailer park and Rosebank Avenue. What is especially telling, however, is that absolutely no one from Rosebank Avenue or the adjoining trailer park testified in protest to the Petitioner's requested relief.

Testimony indicated that the Petitioner has used part of the subject site as a trucking facility since the 1950's and yet no one from the immediate area of Petitioner's property testified as to any past problems with Petitioner's operation of the site or any concerns about the Petitioner's proposed use of the property.

Further the Petitioner would assert that under close scrutiny, the testimony of Ms. Jackie MacMillion related more to standard concerns for placement of a trucking facility within a community with some residential uses than to adverse affects above and beyond those inherently associated with the Petitioner's trucking facility use at this site.

The Protestants also produced Rahee Famili of the Baltimore County Bureau of Traffic Engineering. Mr. Famili could not predict an unsafe condition resulting from Petitioner's proposed use. In addition, on cross examination he admitted that Baltimore County is presently constructing roadways with 9 feet

lanes which will carry significantly more traffic than Rosebank Avenue at much higher speeds.

The testimony before the Board also adduced that there is property owned by an oil company located on Rosebank Avenue next to the trailer park which uses trucks in its operations. There was no testimony adduced, however, as to any adverse affects from this use.

In total, the testimony and evidence presented by the Protestants does not rise to the standard proclaimed by the Court of Appeals in Schultz v. Pritts, namely probative evidence of adverse affects above and beyond those inherently associated with such a special exception use.

The Petitioner's requested special exception should therefore be granted.

C) Petitioner has met its burden under Section 307 of the BCZR and its requested variances should be granted.

i) Petitioner has requested a variance from Section 410.A.3.B.6 to permit parking, loading, maneuvering, and storage surface areas to be crusher run in lieu of paving.

William Meyers, Vice President of the New North Point Company testified that the portion of the subject property that has been used since the 1950's has always had a surface of crusher run and slag. Mr. Meyers further testified that this surface has throughout the years worked well for the subject property.

Mr. Meyers also testified that other trucking facilities in the area operate with the same type of surface. In fact,

Petitioner submits that an inspection of the area reveals that there are numerous trucking facilities in the vicinity operating with a crusher run and/or slag surface.

Mr. Meyers further testified that if the Petitioner was required to pave the site, the paving would cause substantially more run off. The additional run off would likely cause water problems on adjacent properties.

Mr. Meyers testified that being required to pave the site would create an unreasonable hardship on the Petitioner because of the tremendous cost involved with paving a site this large. In fact, he testified that the lowest estimate he has found for a four inch thick surface of asphalt was \$16.50 per square yard with no preparing included. The cost impact on a moderate to low use facility such as the Petitioner's is virtually prohibitive.

John Etzel, in his testimony indicated that the paving on the site is in "good" condition and works well with the use of the facility. Mr. Etzel also indicated that possible runoff problems could occur from paving the site. He indicated that crusher run and slag tend to be permeable as opposed to paved surfaces which tend to be nonpermeable.

The testimony of Nicholas Commodari further confirmed that of William Meyers and John Etzel with regard to the Petitioner's requested paving variance. Mr. Commodari testified that in his opinion the Petitioner would sustain practical difficulty and an unreasonable hardship if the requested variance is not granted.

Although Robert Merrey of the Department of Environment Protection and Resource Management referred to crusher run surfaces potentially causing dust problems, he indicated that these surfaces can be treated to minimize such problems. In addition, Mr. Merrey indicated on cross examination his department advocated the benefits of crusher run in regard to avoiding water run off until approximately a year ago.

ii.) Petitioner has requested a variance from 410.A.2 to allow a setback of 75 feet in lieu of 300 feet of a dwelling.

Once again it should be emphasized that no one who lives in close proximity to the subject site testified in opposition to the Petitioner's requested relief. Certainly no one who would be directly affected by the granting of Petitioner's requested variance from Section 410.A.2 testified in opposition to the request.

The closest portion of Petitioner's property to 8102 Rosebank Avenue is occupied by 8105 Rosebank Avenue and adjoining 8107, 8109 and 8111 Rosebank Avenue. It is the testimony of William Meyers as corroborated by John Etzel and Nicholas Commodari that the dwellings on Petitioner's property are proposed to be used as caretakers' dwellings to provide screening and security for the Petitioner's proposed use. These dwellings insulate 8102 Rosebank Avenue from the area actually used by trucks on the Petitioner's property.

In regard to the area between the trailer park and the Petitioner's property, John Etzel, as stated previously,

testified to the screening providing by fencing and natural vegetation.

The combined testimony of William Meyers, John Etzel and Nicholas Commodari were that the Petitioner needs a variance for its proposed use which is consistent with the properties' use since the 1950's. Further the combined testimony is that the Petitioner will suffer practical difficulty and undue hardship if the requested variance from Section 410.A.2 is not granted.

iii.) Petitioner's final requested variance is from BCZR Section 255.1 (Sec. 238.2) to permit distances between buildings (8105, 8107, 8109 and 8111) Rosebank Avenue, of 21 feet, 46 feet and 36 feet, respectively, in lieu of the required 60 feet.

William Meyers testified that 8105, 8107, 8109 and 8111 Rosebank Avenue have remained situated at the same location since the Petitioner purchased the ground on which the dwellings site. Further, Mr. Meyers testified to the extreme difficulty that would be presented if the Petitioner were to attempt to move any of these structures.

Mr. Meyers' testimony was corroborated by John Etzel and Nicholas Commodari whom further testified as to the practical difficulty and unreasonable hardship the Petitioner would sustain if the requested variance from BCZR Section 255.1 (Sec. 238.2) is not granted.

Review of the testimony and evidence presented indicates that the Petitioner has met its burden under Section 307 of the BCZR with regard to each of its requested variances. Accordingly, all of the Petitioner's requested variances should

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be granted.

IV. CONCLUSION

The evidence produced by the Protestants before the Board when reviewed under the standards established in Schultz v. Pritts, fails to establish the Petitioner's proposed use of a Class II trucking facility will harm the public health, safety or welfare.

The Petitioner has carried on a use on part of the subject property consistent with its proposed use since the 1950's. Yet, the record before this Board is completely devoid of testimony by anyone in the immediate area of the Petitioner's property describing any actual incidents of harm to their health, safety or welfare. In addition, no one in the immediate area of the Petitioner's property testified in protest to the Petitioner's requested relief.

The speculative testimony by members of the community that do not live within the immediate area of the subject property coupled with the expert testimony produced by the Protestants fails to establish the Petitioner's proposed use would have adverse affects above and beyond those inherently associated with a special exception such as the Petitioners.

On the other hand, the Petitioner has produced lay and expert testimony as well as evidence which establishes that the Petitioner's requested special exception can be granted without causing any of the adverse impacts specified in Section 502.1 of the BCZR. In addition, the Petitioner has produced lay and expert testimony as well as evidence that meet the requirements

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of Section 307 of the BCZR and establish that the Petitioner will sustain practical difficulty and unreasonable hardship if its requested variances are not granted.

In light of the above, the Petitioner's requested special exception and requested variances should be granted.

Respectfully submitted,

Francis X. Borgerding, Jr.
FRANCIS X. BORGERDING, JR.
DINENNA AND BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(410) 296-6820
Attorneys for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of June, 1992, a copy of the foregoing Petitioner's Memorandum was mailed, postage prepaid to Phyllis Cole Friedman, and Peter Max Zimmerman, Office of the People's Counsel for Baltimore County, Room 47, Court House, 400 Washington Avenue, Towson, Maryland 21204.

Francis X. Borgerding, Jr.
FRANCIS X. BORGERDING, JR.

-16-

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE COUNTY BOARD
AND VARIANCES
SE/SE Rosebank Ave., 340' NE of : OF APPEALS OF
C/L of North Point Blvd.
(3838 North Point Blvd.) : BALTIMORE COUNTY
15th Election District : CASE NO. 91-292-XA
7th Councilmanic District :
NEW NORTH POINT COMPANY, INC., :
Petitioner : : : : :
JUN 19 1992

PEOPLE'S COUNSEL'S MEMORANDUM

I. Statement of the Case

The New North Point Company, Inc. seeks a special exception and variances for expansion of a nonconforming Class II trucking facility on Rosebank Avenue bordering the Patapsco Freeway exit ramp to Cove Road. In 1978, the Zoning Commissioner approved a site plan for 3.4 acres at the location, which included a "schedule of compliance" involving paving and fencing. The present petition would enlarge the site to 5.4 acres and includes a major variance from the minimum distance to a dwelling and from paving standards for a durable and dustless surface. The case is governed by the comprehensive provisions of Section 410A of the Baltimore County Zoning Regulations (BCZR) which originated in Bill 18 passed in 1978.

II. Property History; Location; and Key Issues

The New North Point Company, Inc. has leased the property for truck use, in one form or another, since the 1950s. Unfortunately, the unique combination of size, location, and conditions of the property have posed serious problems.

The heart of the operation occupies the original 3.4 acres, which is below the minimum provided to minimize overcrowding. BCZR 410A3B1. For this reason, the truck use of the site has tended to spill out beyond its boundaries and even encroached on the State Highways Administration right-of-way. The requested expansion to 5.4 acres does not alleviate this problem, because it involves property on Rosebank Avenue occupied by four large dwellings. Even more important, the site is interior to a residential neighborhood. Its access is near the deadend of Rosebank Avenue, a 20' wide street running from the main road, North Point Boulevard, to its terminus at the freeway. Between North Point Boulevard and the New North Point property is sandwiched a mobile home park. Across Rosebank Avenue are additional dwellings. In other words, every truck using the New North Point facility must pass through this residential area along Rosebank Avenue.

The adverse effect here is again reflected in the law. The most significant provision of the trucking use regulations requires a minimum distance of 300' from a dwelling or a residential zone. BCZR 410A2. See Laskov v. Bethlehem Steel Corporation, Court of Special Appeals No. 18, September Term 1978; see also Final Report of the Baltimore County Planning Board February 18, 1978 entitled, "Proposed Zoning Amendments: Proposed Trucking Facilities" (discussion page attached as Exhibit A.) As to Rosebank Avenue, it does not qualify as a public industrial service road, which is a prerequisite for

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access in the absence of a major collector or arterial street. BCZR 410A3A1.

Superimposed on all of this is the apparently poor condition of the site. Without proper paving, the site generates dust in dry times and ponding in wet weather. BCZR 410A3B8. Testimony of citizens in the area corroborates the videotape evidence of a community eyesore. It also appears to be in a very prominent location adjoining a major freeway exit.

It should be now be obvious that this site is far below the mark set for trucking facilities under current standards of size, location, access, paving, and general condition. These significant problems lead not only to serious questions concerning the proposed expansion of the site, but also its legal status as a nonconforming facility.

For this purpose, it is necessary to understand not only the size, location, access, and paving standards already described, but also the structure of the trucking facility legislation and its provisions for addressing nonconforming facilities and their expansion.

Case review will demonstrate that this facility no longer enjoys a valid nonconforming status and cannot qualify under standards applicable to new uses. The review will also demonstrate that even if the facility were considered validly nonconforming, it could not qualify for expansion.

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III. Legislative Overview

This legislation was the fruit of a major effort to protect residential neighborhoods and the environment by minimizing the adverse effects of trucking facilities, particularly in the older mixed use industrial areas in the southeastern county. There were strong new standards relating to size, location, and site improvement. Because most, if not all, existing facilities could not meet the basic standards, specific provisions were made for filing of plans for nonconforming facilities, which were approvable upon condition of coming into compliance with listed site standards within 27 months. BCZR 410A1, B, and C. Even if plans were filed, failure to conform to the site standards within the stated time period and, in the alternative, failure to obtain a variance, would result in loss of any legal nonconforming status. BCZR 410A1D3.

As for expansion, even a valid nonconforming facility could only expand "to the minimum scope necessary to comply" with site standards, provided further that no such expansion could exceed the limits of the general provisions on nonconforming uses. BCZR 410A1E; BCZR 104. The latter section limits extension of nonconforming uses to an additional 25% of ground floor area of buildings. Moreover, there are the usual special exception standards relating to the public safety, health, and welfare and any applicable variance standards. BCZR 502; BCZR 307.

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IV. Argument

The trucking facilities legislation targeted overcrowded, dusty facilities with residences nearby and poor access to main roads. There were major existing problems with just such facilities. The idea, therefore, was to prevent the construction of any new facilities with these problems and to upgrade, to the extent practicable, existing facilities.

The case of the New North Point Company provides remarkable insights into the operation of this law which, although simple in purpose, is complex in detail. As required for existing facilities, there was a site plan filed with the Zoning Commissioner in 1977. Because the site was below the minimum standard in size and far too close to surrounding residences, it was subject to upgrading requirements for access, fencing, paving, and drainage, among others, under BCZR 410A1B2. The Zoning Commissioner did approve the plan in 1978, although there was no provision for access to a public industrial surface road or for drainage. Moreover, although the plan did provide a schedule for compliance with paving standards and fencing, there is no dispute that the property was never paved, much less within the 27 month time limit. The status of fencing was unclear. The law did give property owners the option to apply for variances from the upgrade requirements, based on hardship and practical difficulty, and with due consideration for any nearby residences under BCZR 410A1C2. There was no variance requested on this site.

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The first point, therefore, is that despite the Zoning Commissioner approval, the New North Point Company site plan was defective as filed. In this connection, nothing in the testimony of Nicholas Commodari, formerly of the Trucking Facilities Committee, can smooth over the plan's omissions. A county official or department is without authority to approve a zoning use which is inconsistent with applicable requirements. Chesapeake Outdoor Enterprises, Inc. v. Mayor and City Council of Baltimore, 89 Md. App. 54 (1991). Secondly, even if the plan in this case were satisfactory to start, it lost its validity when the schedule for compliance with paving standards was disregarded.

As a result, this site has never passed the test for a proper nonconforming trucking facility. In other words, on this record, it enjoys no privileges or benefits which accrue to nonconforming facilities with plans which were proper and schedules which were met. The effect of failure to comply is that this facility must be treated as a new use. BCZR 410A1D3.

Thirdly, even if the New North Point Company site enjoyed the status of a proper nonconforming facility, it would be allowed to expand only in the limited way defined, the extent necessary to meet site and development standards and, in any event, no more than the 25% addition to the ground floor area of existing buildings. BCZR 410A1E.

But the petition in this case does not seek to comply with site and development standards. Rather, it seeks major variances

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from two of the key sections of the law to allow operation next to adjacent residences and to continue operation without the standard durable and dustless surfaces. It is also implicit in the request that the operation continue without direct access to a public industrial service road. While there is a proposed increase in acreage, it does not alleviate the overcrowding or other problems.

This petition turns the trucking facilities legislation upside down. It takes the most crucial standards of the legislation and asks for permission to bypass them. It's the same as if a high school student were to request a college degree but with a variance from the requirement of four years of college-level courses. Such a variance would gut the very purpose and function of a college education.

The special exception and variances requested in this case would similarly destroy the essence of the trucking facilities legislation. That the petition is contrary to the intent of the law is so apparent as to need no further elaboration. But it is no surprise that witnesses from the area have produced strong testimony and videotape evidence of the objectionable site characteristics. The overcrowding, the poor access, the unacceptable site conditions, and the inevitable adverse effect on nearby residents is illustrated very well.

Baltimore County Planner Jacqueline MacMillan added convincing testimony of the incompatibility of the trucking facility at this particular location. She took into

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consideration her familiarity with trucking facilities generally in the southeastern county area and identified this site as presenting extraordinary problems. Robert Merrey, from the Department of Environmental Protection and Resource Management, stated that the request for a paving variance was objectionable on the environmental grounds of nuisance and air pollution. He also noted that the company's claim that its proposed crusher run surface favored infiltration of storm water runoff was exaggerated. Crusher run surfaces tend to become compact over time, resulting in minimal, if any, runoff infiltration benefit. County Traffic Engineer Rahe Famili described the substandard width of Rosebank Avenue as twenty feet as well as the substandard turning radius for trucks at the intersection of North Point Boulevard and Rosebank Avenue. In view of the relatively low amount of expected trips to and from the site, Famili could not predict a dangerous condition, but the sum of his testimony was that the traffic access was below generally accepted standards. In this context, there was no dispute that Rosebank Avenue is neither a public industrial service road, a collector, or an arterial roadway. The expert testimony, combined with that of the citizens, made for an overwhelming case against this petition.

The New North Point Company was fortunate in obtaining approval from the Zoning Commissioner in 1978 to continue despite the defects in its site plan. It was further fortunate in continuing its operations despite inattention to the stated

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schedule of compliance for paving. A trucking facilities law that was intended to be strong appears to have been made weak. The present petition seems the final act in a play dedicated to the effective disappearance of the legislation.

V. Conclusion

It rests with the County Board of Appeals to write this disappearing act out of the script. The appropriate ending includes a rebirth of this good law and the understanding of its goal to protect residential areas and place meaningful limits on trucking sites. The petition here cannot stand in the face of the legislative intent. Whether viewed as an existing facility or a new facility, the request for special exception and variances is uniquely incompatible at this location and comes nowhere near to meeting the appropriate standards and should be denied.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204
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I HEREBY CERTIFY that on this 10th day of June, 1992, a copy of the foregoing People's Counsel's Memorandum was mailed to George A. Breschi, Esquire, and Francis X. Borgerding, Jr.,

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APPEAL

Petition for Special Exception & Zoning Variance
SE/S, Rosebank Avenue, 340' NE of the c/l of North Point Blvd.
(3838 North Point Boulevard)
15th Election District 7th Councilmanic District
NEW NORTH POINT COMPANY, INC. Petitioner
Case No. 91-292-XA

Petition for Special Exception & Zoning Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel (None submitted)

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: 1. Plat to accompany petition

Deputy Zoning Commissioner's Order dated May 22, 1991 (Denied)

Notice of Appeal received June 21, 1991 from S. Eric DiNenna, Attorney on behalf of the Petitioner

cc: C.A. Meyers - New North Point Company, Inc.
3838 North Point Boulevard, Baltimore, MD 21222

Oscar A. Meyers, III, 8220 Abell Avenue, Baltimore, MD 21218

John F. Etzel, 412 Delaware Avenue, Baltimore, MD 21204

Guido Guarnaccia, 3912 Glenhurst Road, Balto., MD 21222

Roland Miskimon, 3921 North Point Boulevard, MD 21222

Randy Hill, 8100 Raymond Avenue, Balto., MD 21222

Jackie MacMillan, Office of Planning, M.S. #3402

Robert Merrey, Environmental Protection, M.S. #3404

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, Chief Deputy County Attorney
Public Services

Esquire, DiNenna and Breschi, Suite 600, Mercantile-Towson Bldg.,
409 Washington Ave., Towson, MD 21204; and Mr. Guido Guarnaccia,
3912 Glenhurst Rd., Baltimore, MD 21222.

Peter Max Zimmerman
Peter Max Zimmerman

IN RE: PETITIONS FOR * BEFORE THE
SPECIAL EXCEPTION AND *
ZONING VARIANCE - SE/S *
Rosebank Avenue *
340' NE of the c/l *
of North Point Blvd. *
(3838 North Point *
Boulevard) *
15th Election *
District *
7th Councilmanic *
District *
New North Point *
Company, Inc. *
Petitioner *
* * * * *

ORDER OF APPEAL

DEAR MR. COMMISSIONER:

Please enter an Appeal on behalf of my client, New North Point Company, 3838 New Point Boulevard, Baltimore, Maryland 21222, from the Decision of the Deputy Zoning Commissioner dated May 22, 1991.

S. ERIC DINENNA, P.A.
409 Washington Avenue
Suite 600
Towson, Maryland 21204
(301) 296-6820
Attorney for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of June, 1991, a copy of the foregoing Order of Appeal was mailed, postage prepaid to People's Counsel of Baltimore County, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

6-21-91
ZONING OFFICE

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IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
AND ZONING VARIANCE - SE/S *
Rosebank Avenue, 340' NE of the *
c/l of North Point Boulevard *
(3838 North Point Boulevard) *
15th Election District *
7th Councilmanic District *
New North Point Company, Inc. *
Petitioner * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special exception for an existing Class II Trucking Facility and variances to permit parking, loading, maneuvering, and storage surface areas to be crusher run in lieu of the required paving, to permit a dwelling setback of 75 feet in lieu of the required 300 feet, and to permit distances between existing buildings, known as 8105, 8107, 8109 and 8111, of 21 feet, 46 feet and 36 feet, respectively, in lieu of the required 60 feet, all as more particularly described on Petitioner's Exhibit 1.

The Petitioner, by Oscar A. Meyers, President, appeared, testified and was represented by S. Eric DiNenna, Esquire. Also appearing on behalf of the Petitions were Oscar A. Meyers, III, and John F. Etzel, Registered Land Surveyor. Appearing as Protestants in the matter were Guido Guarnaccia, Roland Miskimon, and Randy Hill, residents of the area. Jackie MacMillan, Community Planner, Baltimore County Office of Planning, and Robert Merrey, Baltimore County Department of Environmental Protection and Resource Management also appeared.

At the commencement of the hearing, Counsel for the Petitioner noted and objected to its receiving Zoning Plans Advisory Committee Comments on April 19, 1991, just four days prior to the hearing on April 23, 1991. In particular, he noted that it placed Petitioner in a difficult

ORDER RECEIVED FOR FILING
Date 6/21/91
By PHB